

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 22-361 (WMW/DTS)

UNITED STATES OF AMERICA,

Plaintiff,

v.

**GOVERNMENT’S POSITION
ON SENTENCING**

GERALD DARIUS SMITH,

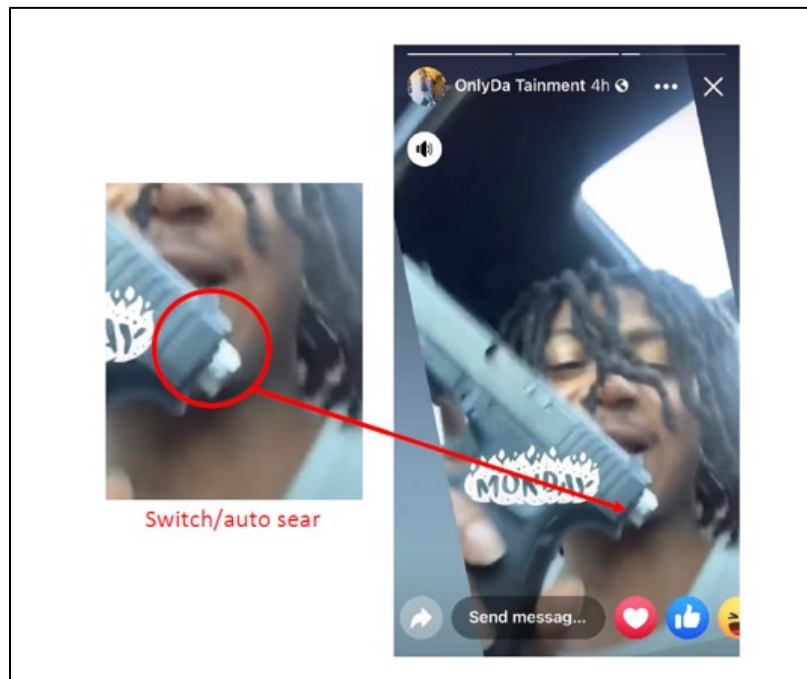
Defendant.

The United States of America, by and through its attorneys, Andrew M. Luger, United States Attorney for the District of Minnesota, and Ruth S. Shnider, Assistant United States Attorney, hereby respectfully submits its position on sentencing with regard to Defendant Gerald Smith. For the reasons set forth below, the Government submits that the appropriate sentence is 60 months, near the bottom of the applicable Guidelines range.

BACKGROUND & PRESENTENCE INVESTIGATION

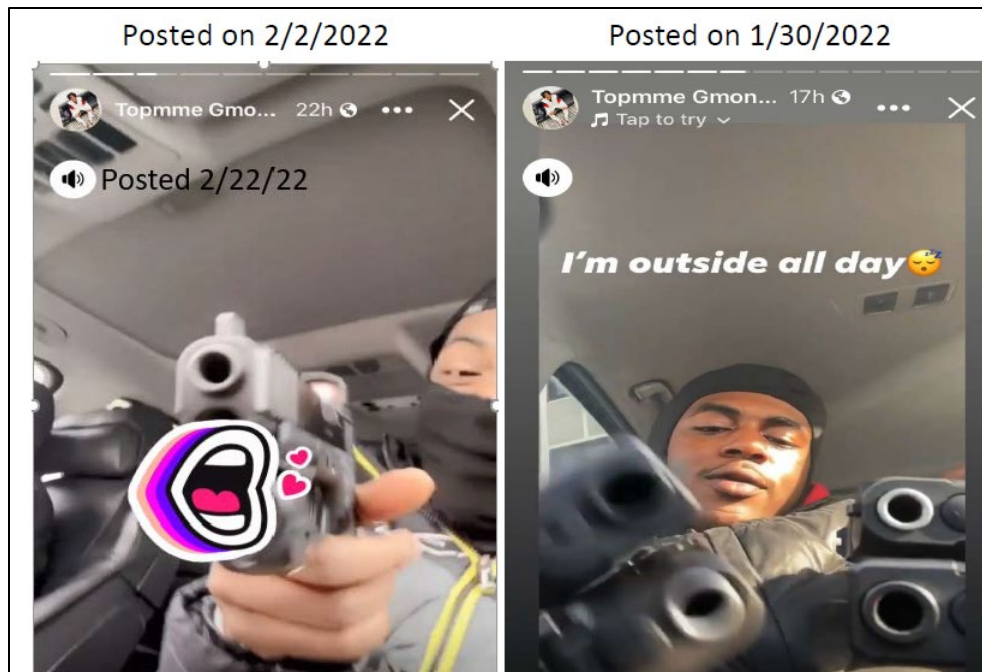
On April 18, 2023, Mr. Smith pleaded guilty to unlawful possession of a machinegun. The charge arose from events on August 4, 2022, when Mr. Smith was arrested on an outstanding warrant. Officers located Mr. Smith in downtown St. Paul and, after he attempted to flee on foot, successfully apprehended him. Mr. Smith’s backpack was found to contain a Glock .40 caliber handgun with a “switch” attached that rendered it a fully automatic weapon. Also in the backpack was a large quantity of marijuana and two scales. Social media posts throughout 2022 showed Mr. Smith gleefully flaunting firearms, including a gun with a switch:

Posted on 7/18/22:



Posted on 8/2/22:





And in a rap music video posted to YouTube in November 2022 under his moniker “GMoney,” Smith can be heard boasting: “I need two boxes of them switches and some guns across the state / I’m going to be really offended if you come back with one crate / I need a dozen of them bitches for the earth to make it quake.” *See* GMoney ft. AP, “FREE KRRazy,” <https://www.youtube.com/watch?v=xPevVNHQyCQ> (posted Nov. 17, 2022).

The United States has reviewed the Presentence Investigation Report (“PSR”) prepared by the U.S. Probation Office and agrees with the recitation of the offense conduct set forth therein. (*See* PSR ¶¶ 7-10). The Government also does not object to the PSR’s findings that Mr. Smith has a total offense level of 21, a Category IV criminal history, and a Guidelines range of 57 to 71 months’ imprisonment. (PSR ¶ 92). There is no statutory mandatory minimum term of imprisonment in this case.

Mr. Smith is only 21 years old but received 9 criminal history points. (PSR ¶ 44). His history shows numerous juvenile adjudications for offenses from theft, to fleeing a peace officer, to credit card fraud, to aggravated robbery. (PSR ¶¶ 28-40). In none of these cases did Smith receive much more than a slap on the wrist; his longest sentence was 6-9 months in detention. As an adult, Smith has incurred only two misdemeanor convictions, but his pending case history tells a much graver story. During 2022 alone, Smith engaged in the following alarming sequence of crimes:

- ***PSR ¶ 49 - 1st Degree Aggravated Robbery and related charges (Ramsey county):*** On 4/12/22, Smith and an accomplice stole a vehicle from a driveway in St. Paul and drove to Roseville mall. Officers followed the GPS tracking on the vehicle and located Smith and the accomplice. Smith fought with officers and successfully fled, discarding a Glock 17 with an extended magazine and obliterated serial number (in view of officers). He then forcibly snatched a 71-year-old woman's car keys and fled in her car.
- ***PSR ¶ 50 - 1st Degree Burglary and related charges (Washington county):*** On 5/1/22, Smith and an accomplice entered a residential garage in Lake Elmo and were seen rummaging through vehicles and then fleeing. Smith was identified through, among other things, distinctive clothing that he was seen wearing in both security video of the burglary and social media posts.
- ***PSR ¶ 51 - Unlawful firearm possession and related charges (Ramsey county):*** On 8/4/22, Smith was arrested and charged in Ramsey County for the conduct underlying this federal case. He ultimately was released to treatment and absconded (PSR ¶ 49).
- ***PSR ¶ 53 - 1st Degree Burglary and related charges (Washington county):*** On 11/8/2022, Smith and an accomplice entered a residential garage in Forest Lake, stole money from inside one vehicle, and drove off in the second vehicle. Later that night Smith and others fled from police in a different stolen vehicle but were ultimately apprehended. Smith was identified by distinctive clothing captured on security video of the burglary.
- ***PSR ¶ 52 - Unlawful firearm possession and related charges (Ramsey county):*** These charges arise from the same series of events on 11/8/22. Smith and three others were seen driving a stolen vehicle, attempted to evade police at high

rates of speed, and, after stop sticks and a PIT maneuver were deployed, fled on foot. They were ultimately apprehended and along Smith's running path, officers found a Taurus 9mm handgun.

Mr. Smith reports significant drug abuse (PSR ¶ 76) but has not previously been successful in treatment. He was discharged from a treatment facility in October 2022 and, as noted above, went on to incur two new felony cases while on warrant status (PSR ¶¶ 52-53, 79).

THE APPROPRIATE SENTENCE

The primary issue before the Court is what constitutes a reasonable sentence in light of the factors enumerated in Title 18, United States Code, Section 3553(a). Based on a balancing of the issues set forth below, the Government believes a total sentence of 60 months is sufficient but not greater than necessary to achieve justice in this case.

Danger and deterrence are the Government's primary considerations in this case. On the issue of danger, the seriousness of Mr. Smith's offense cannot be overstated. "Switches," and the machineguns they create, are one of the single most dangerous plagues facing communities today.¹ Not only does attaching a switch to a Glock permit it to fire a continuous stream of bullets with one pull of the trigger, but it creates a highly unpredictable, unwieldy weapon – one that is difficult to control, and one that increases the risk of bystander injury almost exponentially. And yet to Mr. Smith, a switch was a source

¹ See e.g., *A Summer Under (Automatic) Fire*, KSTP News, September 8, 2022, <https://kstp.com/kstp-news/top-news/a-summer-under-automatic-fire/>; *Shootings Involving Fully-Automatic Guns Skyrocket in Minneapolis*, Bring Me the News, July 29, 2022, <https://bringmethenews.com/minnesota-news/shootings-involving-fully-automatic-guns-skyrocket-in-minneapolis>.

of pride – something to be flaunted on social media and bragged about in his rap songs. A person does not acquire a firearm with a switch for mere personal protection; he does so to telegraph a willingness to inflict *as much harm as possible* if and when he chooses to use that firearm. The flagrancy of this conduct warrants a serious sentence.

Mr. Smith is also in desperate need of deterrence. As the sequence of events described above makes clear, this offense represents just one slice of a veritable flood of criminal conduct that Smith unleashed on his community during 2022. Even as he racked up arrests, charges, and other encounters with law enforcement, Smith returned to his patterns of possessing guns, stealing property, and fleeing the cops. And this followed on a lengthy juvenile court history that dates back to when he was 14 years old. Sadly, the state system has not done Mr. Smith any favors, seemingly sending the message that none of his actions carry real consequences – and he has heard that message loud and clear. Mr. Smith has not even been deterred from possessing guns by several gun deaths amongst his loved ones, as well as being shot himself. (PSR ¶ 60). Although Mr. Smith claims this federal case has been the wake-up call he needs, his record of squandering leniency is simply too lengthy. He has repeatedly chosen to thumb his nose at the law despite ample reasons to turn his life around. This Court's sentence must send a different message.

The Government acknowledges that there are mitigating considerations here. Mr. Smith is still a young man who clearly exhibits youthful deficits in judgment and impulse control. He reports significant drug abuse. And it appears he has long suffered from mental and behavior health disorders. (PSR ¶¶ 68-76). The Government rejects any contention, however, that Mr. Smith was unable to appreciate the harm created by his actions. The fact

that he spent 2022 participating in a coordinated ring of vehicle thefts, while writing and starring in rap music videos, simply belies that notion.

On balance, the Government believes a sentence of 60 months will ensure a meaningful, sustained break from Mr. Smith's negative patterns, while permitting him to rejoin society at a young age.

CONCLUSION

For all the foregoing reasons, absent any grounds for departure, the United States respectfully recommends that the Court impose a sentence of 60 months in prison, followed by three years of supervised release.

Dated: August 28, 2023

Respectfully submitted,

ANDREW M. LUGER
United States Attorney

/s/ Ruth S. Shnider
BY: RUTH S. SHNIDER
Assistant U.S. Attorney